

## International Investment Law: A New Global Constitutional Order?

Professor David Schneiderman

LAW235H1F Course Materials (Winter 2012)

Storage

X 3830 .S362 2012 c.1

BORA LASKIN LAW LIBRARY

JAN - 9 2012

FACULTY OF LAW UNIVERSITY OF TORONTO



## International Investment Law: A New Global Constitutional Order?

Professor David Schneiderman

LAW235H1F Course Materials (Winter 2012)



International Investment Law: A New Global Constitutional Order?	ICSID Convention, Art. 2562
Table of Contents	
I. Intellectual Origins	Compañía de Aguas del Aconquija S.A. & Vivendi Universal v. Argentine Republic (Decision on Anulment) (3 July 2002) Case
Edwin Borchard, "The Minimum Standard of Treatment of Aliens" (1939) 33 ASIL	No ARB/97/3, IIC 70, paras. 93-115 63
Proceedings 51-63	Mobil Corporation Venezuela Holdings BV and ors v. Venezuela (Decision on Jurisdiction), ICSID Case No ARB/07/27;
Alejandro Alvarez, "The Agrarian Reforms: The Hungarian Roumanian Controversy Before the League of Nations" pp. 46-50	IIC 435 (10 June 2010), paras. 62-74, 86-88, 120-41
9	VI. Applicable Law
II. Customary International Law	Vienna Convention on the Law of Treaties,
North American Dredging Company of Texas v. United Mexican States (1926) 20 AJIL 800	Art. 3176
12	ICSID Convention, Art. 4276
The Oscar Chinn Case (12 December 1934) 1934 PCIJ Reports pp. 78-8820	Compañía del Desarrollo de Santa Elena SA v. Costa Rica (Final Award) (17 February
Barcelona Traction [1970] ICJ Reports 3 paras.	2000), ICSID Case No ARB/96/1, IIC 73, paras. 60-6777
33-10328	VII. Jurisdiction
III. Features of the Investment Treaty Regime	Subject Matter: Investments
UNCTAD, Investor-State Dispute Settlement and	Saluka Investments BV v. Czech Republic,
Impact on Investment Rulemaking (New York & Geneva: UN, 2007), Pt II, A42	Partial Award, PCA—UNCITRAL Arbitration Rules; IIC 210, paras. 203-17
Kenneth J. Vandevelde, "The BIT program: A Fifteen-Year Appraisal" (1992) 86 ASIL Proceedings 532-54045	Christoph H. Schreuer, <i>The ICSID Convention:</i> A Commentary, 2 <sup>nd</sup> ed. (Cambridge: Cambridge University Press, 2009) pp. 128-34
Ibrahim Shihata, "Toward Greater	Inmaris Perestroika Sailing Maritime Services
Depoliticization of Investment Disputes: The Roles of ICSID and NIGA" (1986) 1(1) ICSID Review 1, pp. 1-1253	GmbH and ors v Ukraine, Decision on Jurisdiction, ICSID Case No ARB/08/8; IIC
IV Appeals	431 (8 March 2010), paras. 126-34 88
IV. Appeals	Pantechniki SA Contractors and Engineers v.
ICSID Convention on Annulment, Art. 52 (1)	Albania (Award), ICSID Case No ARB/07/21; IIC 383 (28 July 2009), paras. 32-4990
Christoph H. Schreuer, <i>The ICSID Convention:</i> A Commentary, 2 <sup>nd</sup> ed. (Cambridge: Cambridge University Press, 2009) pp. 900-904 59	Abaclat and ors v Argentina, Decision on Jurisdiction and Admissibility, ICSID Case
V Consent to Arbitration	No ARB/07/5; IIC 504 (4 August 2011), selected paragraphs94

	opinion, paras. 94-102, 124-33, 148-52, 197-
Standing: Investors	98168
CMS Gas Transmission Co v Argentina	
(Decision on objections to jurisdiction), ICSID Case No ARB/01/8; IIC 64 (2003); 42	IX. Most-Favored Nation
ILM 788 (17 July 2003), paras. 1-82100	Procedural
	Maffezini v. Spain (Decision on Objections to
Standing: Nationality .	Jurisdiction), ICSID Case No ARB/97/7, IIC
Tokios Tokel s v. Ukraine, Decision on Jurisdiction and Dissent, ICSID Case No	85 (25 January 2000), paras. 38-64 173
ARB/02/18; IIC 258 (20 April 2004), paras.	Plama Consortium Limited v Bulgaria
27-93, dissenting opinion of Prosper Weil, paras. 1-30	(Decision on Jurisdiction), ICSID Case No ARB/03/24, IIC 189 (8 February 2005),
	paras. 183-227179
Aguas del Tunari SA v Bolivia (Decision on	I constitution of the literature
Respondent's Objections to Jurisdiction),	Impregilo SpA v Argentine Republic, Final
ICSID Case No ARB/02/3, IIC 8 (21 August 2005), paras. 205-65128	award, ICSID Case No ARB/07/17; IIC 498 (21 June 2011), selected paragraphs187
Loewen Group Inc and Loewen v United	Substantive
States (Award) ICSID Case No	MTD Equity Sdn Bhd and MTD Chile SA v.
ARB(AF)/98/3, IIC 254 (25 June 2003),	Chile (Award), ICSID Case No ARB/01/7;
paras. 218-42141	IIC 174 (25 May 2004), paras. 100-04190
Mobil Corporation Venezuela Holdings BV	Austrian Airlines v. Slovakia (Final Award),
and ors v. Venezuela (Decision on	Ad hoc—UNCITRAL Arbitration Rules; IIC
Jurisdiction), ICSID Case No ARB/07/27;	434 (9 October 2009), paras. 89-108, full
IIC 435 (10 June 2010), paras. 186-206	dissenting opinion, paras. 1-10 192
148	Y Expressiation
VIII. National Treatment	X. Expropriation
VIII. IVational Treatment	Metalclad Corp v. Mexico (Award), Ad hoc-
SD Myers Inc v. Canada (First Partial Award	ICSID Additional Facility Rules; ICSID Case
and Separate Opinion), Ad hoc—	No ARB(AF)/97/1; IIC 161 (25 August
UNCITRAL Arbitration Rules, IIC 249 (13	2000), paras. 102-112199
November 2000), paras. 238-56151	<i>77</i> 1
/· I	Pope & Talbot Inc v Canada, Interim Award,
Methanex Corporation v. United States (Final	Ad hoc-UNCITRAL Arbitration Rules, IIC
Award on Jurisdiction and Merits), Ad hoc-	192 (26 June 2000), paras. 81-105 202
UNCITRAL Arbitration Rules; IIC 167 (3	
August 2005), Part IV, Chapter B Article	SD Myers Inc v. Canada (First Partial Award
1102, paras. 1-38155	and Separate Opinion), Ad hoc— UNCITRAL Arbitration Rules, IIC 249 (13
Occidental Exploration and Production	November 2000), paras. 279-288207
Company v. Ecuador (Award), LCIA Case No	
UN 3467, IIC 202 (1 July 2004), paras. 167-79	Methanex Corporation v. United States (Final
164	Award on Jurisdiction and Merits), Ad hoc-
	UNCITRAL Arbitration Rules; IIC 167 (3
United Parcel Service of America Inc v	August 2005), Part IV, Chapter D, Article
Canada, Award and separate opinion, Ad	1110, paras. 1-18209
hoc—UNCITRAL Arbitration Rules, IIC 306	

(24 May 2007), paras. 146-55, 173-81, separate

Vivendi Universal SA v. Argentina, (Award), ICSID Case No ARB/97/3, IIC 307 (20	paras. 21-30272
August 2007), paras. 7.5.1-7.5.34 (whole of	CMS Gas Transmission Company v.
7.5)212	Argentina (Award), ICSID Case No ARB/01/8, IIC 65 (12 May 2005), paras. 266-
Chemtura Corporation v Canada, Award, Ad hoc—UNCITRAL Arbitration Rules; IIC 451	84280
(2010) 2 August 2010, paragraphs 238-267	Suez and ors v Argentina, Decision on
218	Liability, ICSID Case No ARB/03/17; IIC 442 (30 July 2010), paragraphs 202-12,
Siag and Vecchi v. Egypt (Award), ICSID Case No ARB/05/15; IIC 374 (11 May 2009),	dissenting opinion of Arbitrator Pedro Nikken283
paras. 427-44223	
XI. Minimum Standard of Treatment	XIII. Exceptions (Defence of Necessity)
	CMS Gas Transmission Company v.
Neer v. United Mexican States (1926) Mexico- USA General Claims Commission229	Argentina (Decision on Application for Annulment), ICSID Case No ARB/01/8; IIC 303 (31 August 2007), paras. 101-36 292
Pope & Talbot Inc v Canada, Award on the	303 (31 11ugust 2007), paras. 101-30 272
Merits of Phase 2, Ad hoc—UNCITRAL	Sempra Energy International v. Argentina
Arbitration Rules, IIC 193 (2001), paras. 105-	(Decision on Argentina's Application for
118237	Annulment of the Award), ICSID Case No ARB/02/16; IIC 438 (10 June 2010), paras.
NAFTA Free Trade Commission, "Notes of Interpretation of Certain Chapter 11	186-219298
Provisions" (31 July 2001)240	XIV. Umbrella Clause
Mondev International Ltd v United States,	SGS Société Générale de Surveillance SA v.
Award, ICSID Case No ARB(AF)/99/2; IIC 173 (11 October 2002), paras. 94-125	Pakistan (Decision on Objections to Jurisdiction), ICSID Case No ARB/01/13;
241	IIC 223 (6 August 2003), paras. 163-74
Glamis Gold Ltd v. United States (Award),	
Ad hoc—UNCITRAL Arbitration Rules; IIC 380 (14 May 2009), paras. 598-627249	Eureko BV v. Poland (Partial Award and Dissenting Opinion), Ad hoc—UNCITRAL Arbitration Rules, IIC 98 (19 August 2005),
Merrill & Ring Forestry LP v. Canada (Award), Ad hoc—UNCITRAL Arbitration	paras. 244-60307
Rules; IIC 427 (31 March 2010), paras. 182- 213256	XV. Damages
213	Chorzow Factory (Merits) No. 13 (13
XII. Fair and Equitable Treatment	September 1928) pp. 29, 46-50314
Técnicas Medioambientales Tecmed SA v.	Luke Eric Peterson, "How Many States Are
Mexico (Award), ARB(AF)/00/2; IIC 247 (29 May 2003), paras. 152-74262	Not Paying Awards Under Investment Treaties?" Investment Arbitration Reporter (7 May 2010)318
International Thunderbird Gaming Corporation v. Mexico (Award), Ad hoc—	2.20, 2010)

UNCITRAL Arbitration Rules, IIC 136 (26

